NO. 83-762

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PAUL A. LaFALCE,

Petitioner,

vs.

MICHAEL HOUSTON and
CITY OF SPRINGFIELD, ILLINOIS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not an independent contractor, with only a unilateral expectation of receiving a municipal contract, suffers a violation of his First Amendment rights if the City Council votes to award the contract to a contractor who

was a political supporter of the Mayor of the City of Springfield, Illinois.

2. Whether or not Michael Houston is absolutely immune from suit.

3. Whether or not Michael Houston actually awarded the contract to Ace Sign Co.

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STATUTES INVOLVED

Section 4-5-11 of the Illinois Municipal Code (Ill.Rev.Stat. 1981, ch. 24, par. 4-5-11) provides:

> Except as otherwise provided, all contracts, of whatever character, pertaining to public improvement, or to the maintenance of the public property of a municipality involving an outlay of $1,500 or more, shall be based upon specifications to be approved by the council. Any work or other public improvement which is not to be paid for in whole or in part by special assessment or special taxation, when the expense thereof will exceed $2,500, shall be constructed as follows:
>
> (1) By a contract let to the lowest bidder after advertising for bids, in the manner prescribed by ordinance, except that any such contract may be entered into by the proper officers without advertising for bids, if authorized by a vote of 4 of the 5 council members elected; or
>
> (2) In the following manner, if authorized by a vote of 4 of the 5 council members elected: the commissioner of public works or

> other proper officers to be designated by ordinance, shall superintend and cause to be carried out the construction of the work or other public improvement and shall employ exclusively for the performance of all manual labor thereon, laborers and artisans whom the city or village shall pay by the day or hour, but all material of the value of $1,500 and upward used in the construction of the work or other public improvement, shall be purchased by contract let to the lowest responsible bidder in the manner to be prescribed by ordinance.
>
> Nothing contained in this section shall apply to any contract by a municipality with the United Stated of America or any agency thereof.

Section 4-5-12 of the Illinois Municipal Code (Ill.Rev.Stat. 1981, ch. 24, par. 4-5-12) provides:

> Regular meetings of the council shall be held on the first Monday after the mayor and commissioners have entered upon the performance of their official duties, and at least twice each month thereafter. The council shall provide by ordinance for the holding of regular meetings. Special meetings may be

called from time to time by the mayor or by 2 commissioners upon giving notice of not less than 24 hours to all members of the council. Public notice of meetings must also be given as prescribed in Sections 2.02 and 2.03 of "An Act in relation to meetings", approved July 11, 1957, as heretofore or hereafter amended. All meetings of the council, whether regular or special, shall be open to the public.

The mayor and each commissioner shall have the right to vote on all questions coming before the council. Three members of the council shall constitute a quorum, and the affirmative vote of 3 members shall be necessary to adopt any motion, resolution, or ordinance, unless a greater number is provided for by this article.

Upon every vote the "yeas" and "nays" shall be called and recorded. Every motion, resolution, or ordinance shall be reduced to writing and read before a vote is taken thereon. The style of all ordinances shall be: "Be it ordained by the council of the city (or village) of _____."

The mayor shall have no power to veto, but every resolution, ordinance or warrant passed or ordered

> by the council must be signed by the mayor, or by 2 commissioners, and all ordinances and resolutions shall be filed for record, before they shall be in force.

Section 11-80-2 of the Illinois Municipal Code (Ill.Rev.Stat. 1981, ch. 24, par. 11-80-2) provides:

> The corporate authorities of each municipality may regulate the use of the streets and other municipal property.

Section 11-80-13 of the Illinois Municipal Code (Ill.Rev.Stat. 1981, ch. 24, par. 11-80-13) provides:

> The corporate authorities of each municipality may regulate the use of sidewalks, the construction, repair, and use of openings in sidewalks, and all vaults and structures thereon and thereunder, including telephone booths, and may require the owner or occupant of any premises to keep the sidewalks abutting the premises free from snow and other obstructions.

STATEMENT OF THE CASE

The facts of the case are stated fully in the decision of the District Court (Petitioner's Appendix A, at A1-3).

SUMMARY OF THE ARGUMENT

The decision of the Seventh Circuit Court of Appeals does not conflict with decisions of the U.S. Supreme Court. The decisions of the U.S. Supreme Court in Perry v. Sinderman, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972); Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); Branti v. Finkel, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980) involved suits by public employees who were being subjected to dismissal or the threat of dismissal because of the exercise of their First Amendment rights of freedom of speech or freedom of association. In this case, Petitioner,

Paul LaFalce, is not a public employee being threatened with dismissal because of his political beliefs or partisan affiliation. Petitioner is an independent contractor who claims he did not receive a contract because of political favoritism. As the plurality opinion in Elrod states:

> Although political patronage comprises a broad range of activities, we are here concerned only with the constitutionality of dismissing public employees for partisan reasons. 427 U.S. at 353.

The present decision of the Seventh Circuit Court of Appeals is fully in accord with the only other decisions by a Court of Appeals in which the same issue has been presented. Fox & Co. v. Schoemehl, 671 F.2d 303 (8th Cir. 1982); Sweeney v. Bond, 669 F.2d 542 (8th Cir. 1982) Cert. denied. 103 S.Ct. 174 (1982).

The Petition does not present an

important question of federal law. Most governmental contracts involving the expenditure of public funds must be let to the lowest responsible bidder. (See, Ill. Rev.Stat. 1981, ch. 24, par. 4-5-11.) These statutes will neutralize the impact of political favoritism in awarding City contracts. Also, an independent contractor can always seek business from the private sector as well as the public sector. The loss of a City contract is not the end of the world for an independent contractor. Many contractors contribute to both parties or candidates, thus, eliminating the need for a constitutional rule protecting their freedom of speech and association. The realities of business would still lead to contributions by government contractors to both major parties. Thus, to extend the First Amendment so as to protect independent contractors would be only a symbolic

gesture.

Independent contractors simply do not need the protection that a public employee needs. If a public employee is fired for exercising his First Amendment rights, the results could be very serious in that his sole source of livelihood could be in jeopardy. Thus, it is a real possibility that a public employee could be coerced into supporting a political party that he does not wish to support for fear of losing his job. The possibility of such coercion being successfully applied to independent contractors is much more remote.

Also, it should be pointed out that Petitioner's complaint was in two counts. The first count was against Mayor Michael Houston. Houston, however, is absolutely immune from suit. Also, Houston lacked the power to let the bus courtesy bench contract. The contract was in fact let

by the City Council by a vote of 4 to 0. (Petitioner's Appendix, at A-1.)

ARGUMENT

I

THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS DOES NOT CONFLICT WITH DECISIONS OF THE U. S. SUPREME COURT

In his Complaint, Petitioner alleges he did not receive the contract because the operators of Ace Sign Co. had made contributions to Mayor Michael Houston's campaign, while Petitioner made no such contributions.

The two Supreme Court cases dealing with political patronage, i.e. Elrod v. Burns, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547, (1976) and Branti v. Finkel, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), have only dealt with partonage dismissals of public employees. They are not applicable to the dismissal of inde-

pendent contractors, let alone to prospective independent contractors who fail to win the contract.

In Elrod v. Burns, supra, non-civil service employees of the Cook County Sheriff's Office who were Republicans filed suit to prevent the newly-elected Democratic sheriff from firing them solely because they refused to associate with the Democratic party. In Elrod, a plurality of the Court held that dismissing public employees solely for partisan reasons violated the First Amendment. The plurality opinion, by Justice Brennan, restricted the holding of the Court to the dismissal of public employees for partisan reasons. (Elrod v. Burns, 427 U.S. at 353, 96 S.Ct. at 2679.)

The concurring opinion of Justices Stewart and Blackman was narrowly limited to the dismissal of a government em-

ployee solely because of his political beliefs. The position of the concurring opinion is considered the opinion of the Court. (Marks v. United States, 430 U.S. 188, 193 (1977); DeLong v. United States, 621 F.2d 618, 622 n.3 (4th Cir. 1980); Orenstein v. Bond, 528 F.Supp. 513 (E.D. Mo. 1981).)

In their concurring opinion, Mr. Justices Stewart and Blackman stated:

> "Although I cannot join the plurality's wide-ranging opinion, I can and do concur in its judgment.
>
> This case does not require us to consider the broad contours of the so-called patronage system, with all its variations and permutations. In particular, it does not require us to consider the constitutional validity of a system that confines the hiring of some governmental employees to those of a particular party, and I would intimate no views whatever on that question.
>
> The single substantive question

> involved in this case is whether a nonpolicymaking, nonconfidential government employee can be discharged or threatened with discharge from a job that he is satisfactorily performing upon the sole ground of his political beliefs. I agree with the plurality that he cannot. See, Perry v. Sindermann, 408 U.S. 593, 597-598, 92 S.Ct. 2694, 2697-2698, 33 L.Ed.2d 570." (Emphasis added) (Elrod v. Burns, 96 S.Ct. at 2690.)

The Court in Branti v. Finkel, supra, did away with the concepts of "policymaker" or "confidential" in determining if a person can be dismissed for partisan reasons. The question is whether party affiliation is an appropriate requirement for effective performance of the public office involved. Most importantly, the Branti court specifically noted that its opinion was limited to the dismissal of public employees for partisan reasons. (Branti v. Finkel, 445 U.S. 507, 513 n.7, 100 S.Ct. 1287, 63 L.Ed. 2d 574 (1980).)

In Sweeney v. Bond, 669 F.2d 542

(8th Cir. 1982), Cert. denied 103 S.Ct. 174 (1982), plaintiffs were Democrats and were appointed fee agents for the Missouri Department of Revenue by Governor Teasdale, a Democrat. Republican Governor Bond dismissed them from their positions. Plaintiffs sued, claiming their dismissal was based upon political affiliation and, as such, a violation of the First Amendment.

The Eighth Circuit Court of Appeals noted that Elrod and Branti were limited to the dismissal of public employees for partisan reasons. It then examined the duties of fee agents and determined they were more in the nature of independent contractors and not employees.

The Sweeney court refused to extend First Amendment protection to patronage practices that do not involve the dismissal of public employees. The Court

of Appeals pointed out that Elrod and Branti are limited only to the dismissal of government employees for partisan reasons. As such, the Court of Appeals affirmed the lower court's dismissal of the complaint.

In Fox & Co. v. Schoemehl, 671 F.2d 303 (8th Cir. 1982), a public accounting firm brought suit against the Mayor of St. Louis pursuant to 42 U.S.C. 1983. Plaintiffs were accountants appointed by Mayor Conway to audit the St. Louis Board of Education. Following the election of Mayor Schoemehl, plaintiffs were dismissed and replaced by Peat, Marwick, Mitchell & Co., another accounting firm that had made contributions to Schoemehl's campaign. Plaintiffs complained of dismissal for political reasons in violation of the First Amendment. Plaintiffs did not dispute the fact that they were in-

dependent contractors. As such, the Court of Appeals held they do not enjoy the protection of Elrod or Branti because plaintiffs were not public employees. The Court of Appeals affirmed the District Court's dismissal of plaintiff's complaint.

The decision of the Seventh Circuit Court of Appeals in no way conflicts with this Court's decision in Perry v. Sinderman, Elrod v. Burns and Branti v. Finkel. Those cases involved the protection of public employees from termination solely because they exercised their First Amendment rights. This case, however, does not involve a public employee threatened with discharge but only involves a contractor who is seeking a contract with the City of Springfield. Therefore, the Petition for Writ of Certiorari should be denied.

II

THE SEVENTH CIRCUIT COURT OF APPEALS FULLY CONSIDERED AND CORRECTLY DECIDED THE ISSUES

The petitioner, Paul LaFalce, sought a contract to install and maintain bus courtesy benches along (Petitioner's Appendix, A-1) City right-of-way. LaFalce would pay the City for the use of the right-of-way and would sell advertising on the back of the benches. The City of Springfield was not purchasing goods from LaFalce. In contracts involving an expenditure of City funds of $2500 or more, the City awards the contract to the lowest responsible bidder. (See, Ill.Rev. Stat. 1981, ch. 24, par. 4-5-11.) Thus, many prospective City contractors would be protected by the provisions of Section 4-5-11 of the Illinois Municipal Code. As such, the necessity of making political contributions to do business

with the City is severely undercut by Section 4-5-11.

Obviously, an independent contractor can do business with the private sector as well as the public sector. Thus, if Petitioner does not get a contract with the City, it is not the end of the world. Petitioner can bid on jobs in the private sector as well as other government contracts.

The Seventh Circuit Court of Appeals also questioned the benefit that would be gained if the contract award process is purged of political influence. The cautious neutrality that characterizes the political activities of American business would probably not be altered even by an ironclad rule against political favoritism in awarding contracts. (Petitioner's Appendix, B-6.)

Most importantly, to afford constitutional protection to every disappointed bidder on a government contract would open the door to a flood of lawsuits.

The question raised by Petitioner as to the need for protecting prospective contractors from political favoritism is simply not so important as to warrant review by the U. S. Supreme Court. Many contracts will be regulated by statutes requiring the contract to be let to the lowest responsible bidder regardless of whether the contractor made any political contributions to any member of the City Council. Therefore, the Petition for Writ of Certiorari should be denied.

III

MAYOR HOUSTON IS ABSOLUTELY IMMUNE FROM SUIT

A

MUNICIPAL LEGISLATORS ARE ENTITLED TO ABSOLUTE IMMUNITY

Ace Sign Company was awarded the contract pursuant to legislative action. The City Council on July 8, 1980 passed an ordinance approving the terms of the contract and authorizing the Mayor to execute the contract on behalf of the City. The vote was 4 to 0 with the Mayor voting in the affirmative.

Houston is absolutely immune from suit because he was acting in a legislative capacity when the ordinance authorizing the contract was passed. Several Federal courts have recognized that local legislators are absolutely immune from suit for action taken within their legislative capacity.

Absolute immunity for local legislators has its roots in Tenney v. Brandhove,

341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019 (1951). In Tenney the Supreme Court recognized absolute immunity for state legislators from suits brought pursuant to 42 USC 1983 as long as the legislators were acting within the sphere of legitimate legislative activity, stating:

> "The privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggle of the Sixteenth and Seventeenth Centuries." (71 S.Ct. at 783,786.)

What remedy does one have when he contends a legislator acting within a legislative capacity abused his powers? Frankfurter replied: "Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses." (71 S.Ct. at 789.)

In Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979),

California and Nevada entered into a compact to create the Tahoe Regional Planning Agency (TRPA) to regulate development of the Lake Tahoe Basin resort area and to conserve its national resources. Six of the ten TRPA members were appointed by county and city governments in California and Nevada and two were members by virtue of their offices in state natural resource agencies.

TRPA adopted a land use ordinance that affected the value of plaintiff's land. Plaintiff brought suit against TRPA and its individual members pursuant to 42 USC 1983, claiming violation of the Fifth and Fourteenth Amendments.

The Court held that TRPA could not have Eleventh Amendment immunity from a 1983 action because it was not functioning as a state but as a political subdivision of the states involved.

(99 S.Ct. at 1177-1178.)

More importantly, the Court held that the individual members of TRPA were absolutely immune from Section 1983 suits for actions that took place in their legislative capacity. Thus, the Court widened the scope of absolute immunity for legislators to include members of a regional political subdivision. (99 S.Ct. at 1179.)

The policy that the Court relied on was that pointed out by Mr. Justice Frankfurter in Tenney v. Brandhove, 71 S.Ct. 783 at 788. (The "public good" rationale.) In order to enable a legislator to perform his duties effectively he must enjoy unfettered freedom of speech and action. Frankfurter pointed out in Tenney that if a legislator is subjected to the cost and inconvenience of trial or the hazard of a judgment it

will impede legislators in the uninhibited discharge of their legislative duty. (71 S.Ct. at 788.)

Mr. Justice Marshall, in his dissent, notes that the Court's decision leaves little room to argue that municipal legislators stand on a different level than their regional government counterparts. The same policy of protecting legislators from the costs of trial and judgments so as to protect their free exercise of legislative powers applies equally to municipal legislators as it does to TRPA legislators. (99 S.Ct. at 1180.)

In Lake Country Estates, the members of TRPA were appointed. However, the members of the Springfield City Council are elected. Thus, they are subject to the discipline of the voters if they abuse their legislative power. (Tenney v. Brandhove, 71 S.Ct. at 788.)

Since the Lake Country Estates, Inc. decision in 1979, several Courts of Appeals and District Courts have recognized absolute immunity for local legislators from Section 1983 suits. (Reed v. Village of Shorewood, 704 F.2d 943 (7th Cir. 1983); Aitchison v. Raffiani, 708 F.2d 96 (3rd Cir. 1983); Kuzinich v. County of Santa Clara, 689 F.2d 1345 (9th Cir. 1982); Gorman Towers, Inc. v. Bogoslavsky, 626 F.2d 607 (8th Cir. 1980); Bruce v. Riddle, 631 F.2d 272 (4th Cir. 1980); Hernandez v. City of Lafayette, 643 F.2d 1188 (5th Cir. 1981), Cert. denied, 102 S.Ct. 1251 (1982); Tolbert v. County of Nelson, 527 F.Supp. 836 (W.D.Va. 1981); Goldberg v. Village of Spring Valley, 538 F.Supp. 646 (S.D.N.Y. 1982).)

Most recently, the Ninth Circuit Court of Appeals recognized that local legislators have complete immunity from suits

based on their legislative acts. (Kuzinich v. County of Santa Clara, 689 F.2d 1345 (9th Cir. 1982).) In Kuzinich, the Board of Supervisors of the County of Santa Clara adopted an amendment to the zoning ordinances which made the operation of Kuzinich's adult theater and bookstore unlawful in the locations at which they were operating. Kuzinich brought suit against the county, its board of supervisors and certain individuals claimint violations of his constitutional rights. The Court of Appeals recognized that the board of supervisors as a legislative body were immune from suit. At page 1350 the Court states:

> "We hold that members of local legislative bodies have complete immunity from suits based on their legislative acts and also that the enactment of a general zoning ordinance is a legislative act. Though the question has been left open until now in this circuit (see Morrison v. Jones,

607 F.2d 1269, 1274 (9th Cir. 1979)), in so holding we follow what we believe to be the rule announced in Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979), and the positive declarations by the Fifth, Fourth, and Eighth Circuits in the cases of Hernandez v. City of Lafayette, 643 F.2d 1188 (5th Cir. 1981); Bruce v. Riddle, 631 F.2d 272 (4th Cir. 1980); and Gorman Towers, Inc. v. Bogoslavsky, 626 F.2d 607 (8th Cir. 1980). We add only this to the decisions in those cases: the manifest need for a rule of absolute immunity is illustrated in this case. Here legislators are involved in balancing social needs against constitutional rights, the kind of balancing which often produces plurality opinions, and almost always dissenting opinions, in the Supreme Court. These legislators now find themselves sued for the total of $2,500,000.00 general damages and $5,000,000.00 punitive damages by a plaintiff whose business, as nearly as we can determine from the record, has not been shut down one day."

The decision of the Supreme Court in Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 99

S.Ct. 1171, 59 L.Ed.2d 401 (1979), and the decisions of the Courts of Appeals in the Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuits leave little doubt that today the law is that City legislators are absolutely immune from Section 1983 suits based on decisions made in a legislative capacity.

B

HOUSTON WAS ACTING IN A LEGISLATIVE CAPACITY

There is little doubt that local legislators may claim absolute immunity from Section 1983 suits, but they must have been acting in a legislative capacity to be entitled to claim such immunity.

In Tenney v. Brandhove, supra, state legislators were working on a legislative committee. Legislative committees are often used to gather information in

order to determine if legislation should be presented to the legislature.

In this case Petitioner (d/b/a Signs of Progress) submitted his bid for the installment and maintenance of bus courtesy benches throughout Springfield. Petitioner was in effect seeking a franchise from the City whereby he would be able to use City property to place his bus courtesy benches. He would then sell advertising to be placed on these benches.

The City Council finally awarded the franchise to another bidder, Ace Sign Company. The franchise was awarded by ordinance. All of the guidelines of the franchise are contained in the contract which was attached to the ordinance.

In short, the contract contains the guidelines by which the franchise for providing bus courtesy benches must operate. There are no other City

ordinances pertaining to letting such a franchise to place bus courtesy benches on City property.

The power to permit someone to use City property is vested in the corporate authorities of the City by Sections 11-80-2 and 11-80-13 of the Illinois Municipal Code (Ill.Rev.Stat. 1981, ch. 24, pars. 11-80-2 and 11-80-13). This power has not been delegated to the Mayor, and consequently, Houston had no power to grant a franchise to place bus courtesy benches on City property. He had no unilateral power to grant a contract to Ace Sign Company or Plaintiff.

There has been no execution or administration of ordinances or laws. Quite the opposite, the contract was awarded to Ace Sign Company by ordinance and the provisions of the contract contain the only policy guidelines by which Ace

Sign Company is to operate the franchise.

Ordinances enacted by municipal governing boards are legislative acts of legislative bodies. (Artz v. Commercial National Bank of Peoria, 125 Ill.App.2d 86, 259 N.E.2d 813 (1970).)

The contract awarding Ace Sign Company the privilege of placing bus courtesy benches on City right-of-way was approved by ordinance. The contract contains the only guidelines governing the placement and maintenance of the benches. There is little doubt that Mayor Houston was acting in a legislative capacity throughout the preparation, consideration and adoption of this ordinance. The granting of a franchise to use public right-of-way is an exercise of the City's legislative authority. (People ex rel. Better Broadcasting Council, Inc. v. Keane, 17 Ill.App.3d 1090, 309 N.E.2d 362, 367 (1974).) The provisions of a

contract adopted by ordinance also fall within the sphere of legislative activity. (Midwest Television, Inc. v. Champaign-Urbana Communications, Inc., 37 Ill.App.3d 926, 347 N.E.2d 34, 40 (1976).)

It is clear Mayor Houston was at all relevant times acting in a legislative capacity. To hold Houston absolutely immune from suit, does not leave Petitioner without remedies. Houston is an elected official and is subject to the discipline of the voters. (Tenney v. Brandhove, 71 S.Ct. at 788.)

IV

AS A MATTER OF FACT AND LAW, MAYOR HOUSTON DID NOT AWARD THE CONTRACT IN QUESTION

The critical element of Count I of the Complaint is the allegation that the contract in question was awarded by Mayor Houston. As a matter of fact and law, however, Mayor Houston did not, and could

not have awarded the contract in question. Rather, it was the City Council of the City of Springfield which awarded the contract, and, consequently, Count I fails to state a claim upon which relief can be granted.

The contract in question, as a matter of fact, was awarded by the City Council, and not by Houston. While Mayor Houston is the signatory on the contract, he is so only pursuant to direction of the City Council as evidenced by the ordinance. It is clear that the City Council and not Defendant awarded the contract.

Furthermore, as a matter of law, Mayor Houston could not have awarded the contract himself. It is a fundamental principle of municipal law that an officer of a municipal corporation cannot bind it by contract unless he is expressly

authorized to do so, or unless the power to do so is necessarily implied from the powers expressly given by statute or by the corporation acting within its powers and in the manner provided by law. (M.A.T.H., Inc. v. Housing Authority of East St. Louis, 34 Ill.App.3d 884, 341 N.E. 2d 51 (1976).) In M.A.T.H., the plaintiff alleged that it was induced to continue a contract with the defendant Housing Authority by a letter from the authority's chairman promising to renegotiate the contract to a higher price after the work called for was completed. The Court ruled that there was no duty for the Authority to renegotiate the contract on the basis that the statute in question did not grant to the chairman or any other member of the Housing Authority any power to contract.

Similar to M.A.T.H., there is no

statute or ordinance which granted Houston the power to award the contract in question. First, there is no statute or ordinance which generally empowers the City's Mayor to unilaterally enter into contracts. Second, with specific reference to public property, it is the corporate authority of a city, being its city council (Ill.Rev. Stat. 1981, ch. 24, par. 1-1-2), which is vested with the power to regulate the use of streets and other municipal property (Ill.Rev.Stat. 1981, ch. 24, par. 11-80-2) and sidewalks. (Ill.Rev.Stat. 1981, ch. 24, par. 11-80-13.) The City Council had not delegated this power to its Mayor. Third, as indicated by a certified copy of a portion of the minutes of the City Council meeting at which the contract in question was awarded, Houston cast only one of the four affirmative votes. Since three affirmative votes were required to

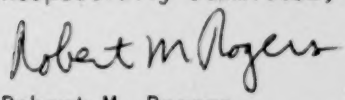
adopt the ordinance awarding the contract (Ill.Rev.Stat. 1981, ch. 24, par. 4-5-12), it was legally impossible for Houston to have awarded the contract.

In summary, given that 1) the relief requested by Count I of the Complaint is premised upon the contract in question having been awarded by Houston, and 2) Houston did not, as a matter of fact, and could not have, as a matter of law, awarded the contract, there exists no claim upon which relief can be granted. Therefore, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the reasons set forth above, the Petition for Certiorari should be denied.

Respectfully submitted,



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